

HIGH COURT OF MADHYA PRADESH**BENCH AT GWALIOR****SINGLE BENCH****PRESENT:****HON'BLE MR. JUSTICE G.S. AHLUWALIA****Misc. Criminal Case No.4801/2010****Amar Singh****-Vs-****Ram Dayal**

Shri G.S.Sharma, counsel for the applicant.

None for the respondent though served.

J U D G M E N T
(31/01/2017)

This petition under Section 482 of CrPC has been filed against the order dated 29/04/2010 passed by the Court of JMFC, Vijaypur, District-Sheopur in Complaint Case No.130/2010 by which cognizance of offence under Section 420 of IPC has been taken.

The facts necessary for the disposal of this application are that a complaint has been filed by the respondent against the applicant under Section 200 of CrPC for charges punishable under Sections 420,465,467 and 468 of IPC. It is the case of the respondent that in the year 2007, one Badri Prasad Kushwaha was the *Surpanch* of Gram *Panchayat* Dord and the applicant was working as *Panchayat Karmi* of Gram *Panchayat* Dord. It was further alleged that Badri Prasad Kushwaha expired on 25/06/2007 at 4:00AM as he was suffering from cancer and cremation was done on the same date at 9:00AM. The Gram Panchayat, Dord had a bank account under Rojgar Guarantee Yojna in State Bank of Indore, Branch-Vijaypur and the amount was to be withdrawn with the joint signatures of the *Surpanch* and *Panchayat Karmi*. Although *Surpanch* Badri Prasad

Kushwaha had expired in the morning of 25/06/2007 but by forging the signatures of dead *Surpanch*, the applicant fraudulently withdrew an amount of Rs.3,00,000/- and with an intention to misappropriate the said amount, it was shown that the said amount was adjusted against the works which were already carried out about an year ago. Not only this, the applicant has wrongly shown the date of death of Badri Prasad as 26/06/2007 whereas he had already expired on 25/06/2007. It was further mentioned that the *Surpanch* was suffering from throat cancer and was confined to bed for the last one month and he was unable to speak. The complaint was made to the Collector and other authorities and by order dated 15/04/2008, passed by Deputy Director (*panchayat*), Sheopur, the applicant was held guilty. The report which was sent to the Superintendent of Police, Sheopur was forwarded to SDO(P), Vijaypur and he too had found the applicant guilty but since no action was taken, therefore, complaint was filed. In support of the complaint, the statement of the applicant as well as his witnesses were recorded under Sections 200,202 of CrPC.

The Trial Court, after considering the material available on record, took cognizance of offence under Section 420 of IPC.

It is submitted by the counsel for the applicant that it is incorrect to say that Badri Prasad had expired on 25/06/2007. According to the applicant, in fact Badri Prasad had expired on 26/06/2007. Further it was submitted by the counsel for the applicant that the Accountant, *zila Panchayat*, Sheopur had given a report to the Chief Executive Officer, *Zila Panchayat*, Sheopur to the effect that Badri Prasad had expired on 26/06/2007 and not on 25/06/2007. The counsel for the applicant has also relied upon the death certificate issued by the competent authority. It was further submitted that the powers of the Secretary were also restored to the applicant by Chief Executive Officer cum Additional Director(*Panchayat*), *Zila Panchayat*, Sheopur. He further submitted that even if the allegations against the

applicant are found to be proved, then in view of Section 92 of Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993, the criminal proceedings cannot be initiated against the applicant.

Heard the learned counsel for the applicant and perused the record.

It is clear that the present petition has been filed against the order taking cognizance. There was no interim order in favor of the applicant. The cognizance was taken in the year 2010 and the applicant is not in the position to state the present status of the trial. Six long years have passed and nobody knows that what had transpired in between this period. However, so far as the contentions raised by the present applicant are concerned, the documents on which he has placed reliance cannot be taken note of while exercising power under Section 482 of CrPC. It is well established principle of law that the defence of the applicant cannot be considered for quashing criminal proceedings.

So far as the submission made by the counsel for the applicant that in view of Section 92 of Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993, that the applicant cannot be prosecuted under Criminal law is concerned, suffice it to say that there is no provision under the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 which bars the application of provisions of Indian Penal Code. Section 92 of the Act reads as under:-

“92. Power to recover records articles and money. – (1) Where the prescribed authority is of the opinion that any person has unauthorisedly in his custody any record or article or money belonging to the Panchayat [or Gram Nirman Samiti and Gram Vikas Samiti] [or committee of Gram Sabha], he may, by a written order, require that the record or article or money be delivered or paid forthwith to the Panchayat [or Gram Nirman Samiti and Gram Vikas Samiti] [or committee of Gram Sabha], in the presence of such officer as may be appointed by the prescribed authority in this behalf.

(2) If any person fails or refuses to deliver the record or article or pay the money as directed under sub-section (1) the prescribed authority may cause him to be apprehended and may send him with a warrant in such form as may be prescribed, to be confined in a Civil Jail for a period not longer than thirty days.

(3) The prescribed authority may –

(a) for recovering any such money direct that such money be recovered as an arrear of land revenue: and

(b) for recovering any such record or articles issue a search warrant and exercise all such powers with respect thereto as may lawfully be exercised by a Magistrate under the provisions of Chapter VII of code of Criminal Procedure. 1973 (No.2 of 1974).

(4) No action under sub-section (1) or (2) or (3) shall be taken unless a reasonable opportunity has been given to the person concerned to show cause why such action should not be taken against him.

[(4-A) The case pertaining to recovery of any record or article or money initiated by the prescribed authority shall be disposed of within six months from the date of initiation.]

(5) A person against whom an action is taken under this Section shall be disqualified to be member of any Panchayat [or Gram Nirman Samiti and Gram Vikas Samiti] [or committee of Gram Sabha] for a Samiti and Gram Vikas Samiti] [or committee of Gram Sabha] for a period of [six] years commencing from the initiation of such action.”

Thus, it is clear from the above Section that if any office bearer of the *Panchayat* is in illegal possession of money belonging to the *Panchayat*, then that can be recovered. Section 92 simply empowers the authority to recover the illegally withheld amount belonging to the *Panchayat* by an office bearer of *Panchayat*. Therefore, it is not open for the applicant to submit that although he might have misappropriated the amount belonging to the *Panchayat* but in view of Section 92 of Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993, he cannot be prosecuted. Suffice it to say that there is no provision in the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 which bars the provisions of Indian Penal Code.

If a person has misappropriated the amount, then not only

he is liable to refund the amount under Section 92 of Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 but he can also be criminally prosecuted for the said offence which he had committed.

Under these circumstances, it cannot be held that the Court below commit any mistake by taking cognizance against the applicant.

For the reasons mentioned above, this petition fails and is hereby **dismissed**.

AKS

(G.S. AHLUWALIA)
Judge